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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

OFFSHORE SUPPLY SYSTEMS, LLC,

Plaintiff and Respondent,

v.

CS INDUSTRIES, INC. et al.,

Defendants and Appellants.

D075093

(Super. Ct. No. CIVRS1209695)

APPEAL from a judgment and postjudgment order of the Superior Court of San Bernardino County, Keith D. Davis, Judge. Affirmed.

Stephens Friedland, John B. Stephens, and Jennifer L. Bradford for Defendants and Appellants.

The Law Office of David L. Fleck and David L. Fleck for Plaintiff and Respondent.

CS Industries, Inc. and its officers Bing Liu and Yuli Gan (collectively, CS) appeal a judgment and related postjudgment order in favor of Offshore Supply Systems, LLC (Offshore Supply) following a jury trial on Offshore Supply's causes of action for

breach of contract, intentional misrepresentation, negligent misrepresentation, and willful failure to pay commissions in violation of Civil Code section 1738.15.¹ The jury awarded Offshore Supply approximately \$445,000 in compensatory damages, \$150,000 in punitive damages against each of Liu and Gan, and \$100,000 in punitive damages against CS Industries, Inc.

CS contends the trial court erred by denying its motions for judgment notwithstanding the verdict (JNOV) and for a new trial. The motions were premised on the following grounds: (1) the evidence did not support a violation of section 1738.15 because Offshore Supply did not solicit wholesale orders at least partially in California; (2) the evidence did not support the jury's damages award; (3) the evidence did not support a finding of intentional misrepresentation; and (4) the evidence did not support a finding of fraud sufficient to allow punitive damages. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

"As required by the rules of appellate procedure, we state the facts in the light most favorable to the judgment." (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 532, fn. 1.) Additional facts will be discussed where relevant in the following section.

Headquartered in California, CS acts as an intermediary between Chinese manufacturing firms and customers in the United States. Liu is CS's president, and Gan

¹ This section is part of the Independent Wholesale Sales Representatives Contractual Relations Act of 1990. (Civ. Code, § 1738.10 et seq.) Further statutory references are to the Civil Code.

is its vice president. Liu first met Michael Bonney, Offshore Supply's founder, while Liu was working for a different distributor. They were both at the same conference for aftermarket automotive parts.

Some years later, pursuant to a written contract, CS engaged Offshore Systems to act as a nonexclusive sales representative for its products. The contract specified that Offshore Systems had a worldwide sales territory and was authorized to solicit orders for all products manufactured by CS or its suppliers. The contract stated, "[Offshore Supply] may from time to time solicit orders from customers in the above described territory for the described products, as follows: [¶] [Offshore Supply] may identify on Appendix A customers having [the] potential to purchase items supplied by CS. Such customers identified in Appendix A and in future revisions to Appendix A shall be deemed OSS REPRESENTED CUSTOMERS. This list will be updated from time to time at [Offshore Supply's] discretion. Within 30 days of receipt of Appendix A or any update of Appendix A CS shall identify any customers not previously included in Appendix A which it declines to be represented by [Offshore Systems] and so notify [Offshore Systems]. The parties may mutually agree to remove customers from the list from time to time."

Under the contract, Offshore Supply earned a commission on each sale to a represented customer identified in Appendix A. Offshore Supply's commissions varied based on CS's gross margin for the sale, according to a schedule in the contract. As CS's gross margin increased, Offshore Supply's commissions also increased. For example, if CS's gross margin were 30 percent, Offshore Supply would earn a commission of nine

percent of CS's gross selling price. If CS's gross margin were 20 percent, however, Offshore supply would earn a commission of five percent of CS's gross selling price.

The contract defined CS's gross selling price as "CS's invoice price to the customer excluding customary logistic expenses . . . provided such items are explicitly stated on the invoice to the customer." CS's gross margin was defined as CS's gross selling price minus CS's cost of goods sold, divided by the gross selling price. CS's cost of goods sold, in turn, was defined as "the invoice price of the product from CS's manufacturer plus customary logistic expenses . . . not invoiced to the [customer]."

At the time of the contract, CS and Offshore Supply had developed a relationship with a Swedish company, Electrolux. CS agreed to supply Chinese-manufactured crankshafts to Electrolux, which incorporated the crankshafts into consumer chainsaws at an assembly plant in Arkansas. Later, CS also supplied axles for lawnmowers, but the axles rusted during shipment and were only purchased for a brief period of time.

Electrolux was the sole Offshore Supply-represented customer listed in Appendix A. Later, Electrolux spun off the business that assembled the chainsaws into a separate company, Husqvarna. For ease of reading, we will refer to this customer as Husqvarna in the remainder of this opinion.

Over several years, Husqvarna purchased hundreds of thousands of crankshafts from CS. To place an order for crankshafts, Husqvarna submitted a purchase order to CS. CS, in turn, submitted its own purchase order to one of its three manufacturers in China. The manufacturer shipped the crankshaft order and provided an invoice to CS. CS then invoiced Husqvarna for the completed order.

The parties agree that, under the contract, Offshore Supply's commissions should have been calculated using CS's invoices to Husqvarna (to obtain the gross selling price) and the manufacturer's invoices to CS (to obtain the cost of goods sold) plus any logistics expenses. CS created spreadsheets to make this calculation, which it sent to Offshore Supply. Over the course of the contract, CS made periodic commission payments to Offshore Supply.

Soon after CS began supplying crankshafts to Husqvarna, it reported that its manufacturers were increasing their prices. These price increases reduced CS's gross margins and significantly affected Offshore Supply's commissions. Price increases became a regular occurrence. CS would frequently issue a purchase order to a supplier at one price, and the manufacturer would invoice CS at a higher price. CS and Offshore Supply secured an increase in the price Husqvarna paid for the crankshafts, but CS continued to report that its manufacturer costs were increasing as well.

CS began negotiations with one Chinese manufacturer to allow the manufacturer to sell parts directly to Husqvarna. Because this change would cause the manufacturer to violate its existing contract with CS, Offshore Supply's founder Bonney believed CS should be able to demand significant compensation. A year later, Offshore Supply discovered that CS's manufacturer was in fact supplying crankshafts directly to Husqvarna. CS had not informed Offshore Supply about the new agreement.

Bonney contacted Liu at CS to talk about the agreement. Liu told Bonney that under the new agreement CS was paid only a two percent commission. Bonney believed CS should have been able to get a 10 to 30 percent commission. At that point, CS offered

Offshore Supply half of its revenues from the new agreement, or a one percent commission, but Bonney refused. Bonney later testified that a two percent commission was significantly less than standard, and CS would have made more money if it had simply let the original contract run its course.

Bonney began to suspect that CS had not properly paid commissions to Offshore Supply on the crankshafts CS sold to Husqvarna. After some investigation, Offshore Supply filed this lawsuit against CS, Liu, and Gan. It asserted various causes of action premised on the underlying allegation that CS had misrepresented its costs and intentionally paid Offshore Supply less in commissions than it owed under their contract.

The court held a two-week jury trial on Offshore Supply's claims. Bonney, Liu, and Gan testified. Offshore Supply offered into evidence a number of purchase orders and corresponding manufacturer invoices that CS produced in discovery. Although the invoices purported to be from different manufacturers, they were very similar in form and layout. They were not signed or stamped, as is traditional, and many appeared to be electronic copies only. Many invoices appeared to be "commercial invoices," which are used for customs purposes rather than accounting purposes. Although the commercial invoices were supposedly generated by the manufacturers, CS modified them to describe the crankshaft shipments in different ways to achieve more favorable customs treatment. Offshore Supply also introduced commission spreadsheets prepared by CS.

In order to support Offshore Supply's cause of action under section 1738.15, which applies specifically to wholesale sales representatives operating at least in part in California, Bonney testified that on behalf of CS he had "made aftermarket calls in

California on automotive aftermarket people. And [he] called on a distributor and worked on putting a distribution agreement together with them for CS which didn't happen." On cross-examination, Bonney confirmed that Husqvarna, specifically, was not located in California and he did not meet with a Husqvarna representative in California. For its part, Offshore Supply was based in Virginia and later in China.

Bonney calculated Offshore Supply's damages using three different methods. The method amounting to the lowest damages number, which the jury apparently adopted, used CS's purchase orders to its manufacturers as CS's cost of goods sold. Bonney previously testified that a purchase order is an agreement to buy a part at a particular price, and he could not explain why there would be a discrepancy between the price in the purchase order and the price in the later manufacturer invoice. Bonney used the purchase order price in place of the manufacturer invoice price and, using that number, determined what his commissions should have been. He then compared that result to the commissions he actually received, as set out in CS's commission spreadsheets. Bonney concluded he had been underpaid by approximately \$445,000.

In closing arguments, Offshore Supply asserted that the invoices produced by CS were fraudulent and overstated CS's supplier costs, thereby reducing Offshore Supply's commissions. CS, in turn, argued that the invoices reflected its actual costs and Offshore Supply's commissions were fully paid.

The jury found in favor of Offshore Supply on its causes of action for breach of contract, intentional misrepresentation, and violation of section 1738.15. It awarded Offshore Supply approximately \$445,000 in compensatory damages. This amount was

trebled under section 1785.15. The jury further found that Liu and Gan had acted with malice, oppression, or fraud. After a bifurcated trial on punitive damages, the jury awarded Offshore Supply an additional \$100,000 against CS and an additional \$150,000 against each of Liu and Gan.²

After entry of judgment, CS filed motions for JNOV and a new trial. The relevant arguments from these motions are discussed below. The trial court denied the motions, and CS appeals.

DISCUSSION

I

Judgment Notwithstanding the Verdict

A. Governing Law and Standard of Review

CS contends the trial court erred by denying its motion for JNOV. "[T]he purpose of a JNOV is 'to prevent the moving defendant from the necessity of undergoing any further exposure to legal liability when there is insufficient evidence for an adverse verdict.'" (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 794.) "The trial judge's power to grant a judgment notwithstanding the verdict is identical to his power to grant a directed verdict. [Citations.] The trial judge cannot weigh the evidence [citation], or judge the credibility of witnesses. [Citation.] If the evidence is conflicting or if several reasonable inferences

² Offshore Supply also asserted a cause of action for negligent misrepresentation, but the jury did not find in its favor because it determined the misrepresentations were intentional.

may be drawn, the motion for judgment notwithstanding the verdict should be denied.

[Citations.] 'A motion for judgment notwithstanding the verdict of a jury may properly be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support the verdict. If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied.' " (*Hauter v. Zogarts* (1975)

14 Cal.3d 104, 110 (*Hauter*); accord, *Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.)

"On appeal, we review the motion de novo. '[W]e determine whether substantial evidence supported the verdict, viewing the evidence in the light most favorable to the party who obtained the verdict. [Citation.] We resolve all conflicts in the evidence and draw all reasonable inferences in favor of the verdict, and do not weigh the evidence or judge the credibility of witnesses.' " (*Linear Technology Corp. v. Tokyo Electron Ltd.* (2011) 200 Cal.App.4th 1527, 1532 (*Linear*).) "In reviewing a trial court's denial of a motion for judgment notwithstanding the verdict, we ask: Does the record, viewed in the light most favorable to the jury's verdict, contain evidence that is reasonable, credible and of solid value sufficient to support the jury's verdict?" (*Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 890 (*Licudine*).)

B. *Solicitation of Wholesale Sales in California*

CS first argues the evidence does not support the jury's verdict in favor of Offshore Supply on its cause of action for violation of section 1738.15. That statute provides, "A manufacturer, jobber, or distributor who willfully fails to enter into a written

contract as required by this chapter or willfully fails to pay commissions as provided in the written contract shall be liable to the sales representative in a civil action for treble the damages proved at trial." (§ 1738.15.) The statute applies "[w]henver a manufacturer, jobber, or distributor is engaged in business within this state and uses the services of a wholesale sales representative, who is not an employee of the manufacturer, jobber, or distributor, to solicit wholesale orders at least partially within this state, and the contemplated method of payment involves commissions" (§ 1738.13, subd. (a).) "These provisions . . . limit the [statute's] scope to cover manufacturers hiring salespersons to solicit[] wholesale orders within California, having territories 'at least partially' within our state." (*Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 550 (*Reilly*).)

CS focuses on the requirement in section 1738.13 that a wholesale sales representative, here Offshore Supply, must "solicit wholesale orders at least partially within this state" in order to assert a violation of section 1738.15. It claims the evidence does not support a finding that Offshore Supply solicited wholesale orders at least partially in California. We disagree. To begin, the contract at issue established a "worldwide" territory for Offshore Supply's sales operations, which obviously includes California. CS itself is based in California. Although the contract identified only Husqvarna as a represented customer, it granted Offshore Supply the power and discretion to identify additional customers—presumably based on its sales efforts on behalf of CS. As to Offshore Supply's specific sales efforts, Bonney testified that he "made aftermarket calls in California on automotive aftermarket people. And [he] called

on a distributor and worked on putting a distribution agreement together with them for CS which didn't happen." Based on this testimony, and the structure of the relationship between Offshore Supply and CS, the jury could reasonably conclude that Offshore Supply had solicited wholesale orders within California, at least for "automotive aftermarket" products and additional unnamed CS products for distribution.

CS points out that Bonney did not use the words "wholesale sales" in his testimony about his California sales efforts. But, given CS's business and Offshore Supply's role, the jury could reasonably infer that Bonney's efforts involved soliciting wholesale sales, rather than some other type of sales. CS also points out that Offshore Supply did not offer any direct evidence that "CS ever sold after-market automotive parts or that a wholesale order for such parts was ever made by CS." But the jury could reasonably infer that CS could sell aftermarket automotive parts based on Liu's history at an automotive parts convention and the fact that Bonney was making sales calls about automotive parts on behalf of CS. A *completed* sale or wholesale order is not required under the statute. It requires only *solicitation* of wholesale orders. (§ 1738.13, subd. (a); *Reilly, supra*, 218 Cal.App.4th at p. 550.)

CS claims "the 'calls' had nothing to do with the contract at issue on which [Offshore Supply] was suing, which relates to sales to Husqvarna—the only customer covered by the contract, or crankshafts and axles." But the fact that CS's obligation to pay commissions was limited to Husqvarna does not mean that Offshore Supply's sales efforts were limited to that customer or the products it purchased. Offshore Supply had a worldwide sales territory and was authorized to solicit orders for any products

manufactured by CS or its suppliers. Offshore Supply had the power and discretion to add customers to the contract if it believed they would purchase CS products. And, as explained above, Offshore Supply solicited orders in California from additional customers on behalf of CS. Under these circumstances, the fact that the contract lists Husqvarna as the sole Offshore Supply-represented customer does not preclude a cause of action for violation of section 1738.15.

CS argues it should not be responsible for "Bonney's supposed secret speculative customer," but CS misunderstands the nature of the statute. It "cover[s] manufacturers hiring salespersons to solicit[] wholesale orders within California, having territories 'at least partially' within our state." (*Reilly, supra*, 218 Cal.App.4th at p. 550.) It protects sales representatives who operate at least partially in California, and as explained above the jury could reasonably find that Offshore Supply was such a sales representative. Offshore Supply is therefore entitled to assert a cause of action under the statute for unpaid commissions, regardless whether the unpaid commissions specifically relate to a California customer. (See, e.g., *181 Sales, Inc. v. Karcher North America, Inc.* (N.D.Cal. July 6, 2016, No. 15-CV-03191-JST) 2016 WL 3648603.)

CS's remaining arguments are simply invitations for this court to reweigh the evidence. Given our standard of review, they are unpersuasive. (See *Linear, supra*, 200 Cal.App.4th at p. 1532.) The evidence supports the jury's verdict on Offshore Supply's cause of action under section 1738.15. CS has not shown the court erred by denying its motion for JNOV on this ground.

C. Damages Award

CS next argues that the evidence does not support the jury's damages award and the amount awarded was speculative. The damages here stem from CS's failure to pay Offshore Supply the commissions it was due under the contract. "Contract damages compensate a plaintiff for its lost expectation interest. This is described as the benefit of the bargain that full performance would have brought. [Citation.] Contract damages 'awarded should, insofar as possible, place plaintiff in the same position he would have been had the contract been performed, but he should not be awarded more than the benefit which he would have received had the promisor performed.'" (*New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831, 844; see § 3300.)

"Whatever its measure in a given case, it is fundamental that 'damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. [Citations.]' [Citations.] However, recovery is allowed if claimed benefits are reasonably certain to have been realized but for the wrongful act of the opposing party." (*Piscitelli v. Friedenber*g (2001) 87 Cal.App.4th 953, 989.) " 'The evidence is insufficient to support a damage award only when no reasonable interpretation of the record supports the figure.' " (*Rony v. Costa* (2012) 210 Cal.App.4th 746, 754.)

"While it is provided by section 3301 . . . that 'No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin[,] such provisions have been liberally construed. Thus, it has been repeatedly held that

where there is no uncertainty as to fact of damage, that is, as to its nature, existence or cause, the same certainty as to its amount is not required. [Citation.] Too, one whose wrongful conduct has made difficult ascertainment of damages cannot complain because the court must make estimate of damages and not exact computation, provided that estimate is reasonable." (*Stephan v. Maloof* (1969) 274 Cal.App.2d 843, 850-851 (*Stephan*); accord, *Stott v. Johnston* (1951) 36 Cal.2d 864, 875; *GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 873 (*GHK*).)

Viewing the record in the light most favorable to the verdict, as we must, we conclude the evidence supports the jury's damages award. The jury reasonably found that CS fabricated manufacturer invoices and underpaid Offshore Supply based on those fabrications. (See part I.D., *post.*) Under the contract, Offshore Supply's commission was based on CS's gross margin, which was calculated using CS's cost of goods sold as stated in its manufacturer invoices. Because the manufacturer invoices were unreliable, Bonney testified that he used CS's purchase orders to calculate CS's cost of goods sold, its gross margin, Offshore Supply's commission percentage, and CS's underpayment. The use of CS's purchase order price to approximate the manufacturer invoice price was reasonable. Bonney testified that a purchase order is an agreement to buy a part at a particular price. It was therefore reasonable for Bonney—and the jury—to use this price in place of the invoice price in calculating CS's cost of goods sold and its gross margin. "The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation." (*GHK, supra*, 224 Cal.App.3d at p. 873.)

CS criticizes Bonney's testimony, but he fully explained how he estimated his damages based on the substitution of CS's purchase orders for its manufacturer invoices in the commission formula in the contract. And Bonney's testimony was not the only evidence of damages. The jury had the contract itself as well as numerous purchase orders, invoices, and commission spreadsheets. CS has not shown the jury could not do its own calculations of damages based on these documents.³

CS emphasizes that the contract specifies that its cost of goods sold must be based on the " 'invoice price,' " not a purchase order price. But, as explained above, the jury could reasonably approximate the real invoice price using the purchase order price. This approximation was especially warranted here because it was CS's own wrongdoing that resulted in the unreliable invoice prices in the first place. As noted, "one whose wrongful conduct has made difficult ascertainment of damages cannot complain because the court must make estimate of damages and not exact computation, provided that estimate is reasonable." (*Stephan, supra*, 274 Cal.App.2d at pp. 850-851.)

³ Except for the contract itself, CS did not include these documents as part of the record on appeal. Because these documents are central to any damages calculation, CS has not fulfilled its duty to provide an adequate record on appeal. " ' "A judgment or order of the [trial] court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent" (Orig. italics.) [Citation.]' [Citation.] It is the appellant's affirmative duty to show error by an adequate record. [Citation.] 'A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.' " (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) Our understanding of these documents comes from Bonney's description in his testimony and from certain documents provided by Offshore Supply after its motion to augment the record was granted.

CS references discovery responses in which Offshore Supply did not identify this damages theory and, instead, said that additional amounts were "based on speculation." These discovery responses have no bearing on whether the evidence actually introduced at trial supports the jury's damages award. Moreover, "[i]nterrogatory answers are *not* preclusive. The answering party may contradict or explain the answers by introducing newly-discovered evidence, etc." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2018) ¶ 8:1247.) CS has not shown the evidence was insufficient to support the jury's award for the reasons we have already discussed. CS's contrary arguments are unpersuasive. It has not shown the court erred by denying its motion for JNOV on this ground.

D. Intentional Misrepresentation

CS argues the evidence does not support the jury's verdict in favor of Offshore Supply on its cause of action for intentional misrepresentation. "The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Offshore Supply's theory of fraud at trial was that CS (through Liu and Gan) intentionally misrepresented its costs by fabricating manufacturer invoices, which falsely showed an increase in manufacturing costs. These fabricated invoices appeared to reduce CS's gross margins and thus appeared to justify a reduction in Offshore Supply's commissions.

On appeal, CS's primary argument revolves around the allegation that Offshore Supply did not disclose this theory in pretrial discovery responses. But on substantial evidence review we are not concerned with discovery issues. We examine the admitted evidence to determine whether it reasonably supports the jury's verdict. (*Hauter, supra*, 14 Cal.3d at p. 110; *Licudine, supra*, 3 Cal.App.5th at p. 890.) Failure to disclose facts or theories may subject a party to discovery sanctions, as the authorities cited by CS show. (See, e.g., *Thoren v. Johnston & Washer* (1972) 29 Cal.App.3d 270, 274-275.) But CS does not contend the trial court erred by failing to order discovery sanctions. It contends that the evidence does not support the jury's verdict. Its reliance on Offshore Supply's discovery responses in this context is unpersuasive.

CS also argues the evidence did not support the jury's finding that CS made intentional misrepresentations. We disagree. Viewed in the light most favorable to the verdict, the record shows that the purported manufacturer invoices were (1) not signed or stamped as would be customary in China, (2) produced in electronic form and therefore easily manipulated, and (3) virtually identical in form even when ostensibly issued by different manufacturers. The record further shows that the invoices reflected price increases as compared to the purchase orders, which was unusual and unexplained, and that CS could and did manipulate the invoices for customs purposes. Offshore Supply also presented evidence that CS was not forthright about its new manufacturing agreement and the commissions Offshore Supply would earn on that agreement were suspiciously low. Based on this evidence, the jury could reasonably conclude that CS

fabricated the manufacturer invoices and intentionally misrepresented its manufacturing costs in an effort to underpay Offshore Supply's commissions.

CS focuses on contrary evidence showing that the price increases were genuine. But such a focus is inconsistent with our standard of review. We must view the evidence in the light most favorable to the verdict and draw all reasonable inferences in support of upholding it. (*Hauter, supra*, 14 Cal.3d at p. 110; *Linear, supra*, 200 Cal.App.4th at p. 1532.) Under this standard, the jury's verdict is supported by the evidence. CS has not shown the court erred by denying its motion for JNOV on this ground.

E. Finding of Fraud to Support Punitive Damages Award

In a similar vein, CS contends the evidence does not support the jury's finding of fraud by clear and convincing evidence, which is required to justify punitive damages under section 3294. "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) In essence, we must determine whether a reasonable jury could have made the finding of fraud by clear and convincing evidence. (See *Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 59-60.)

CS's arguments in support of this contention mirror its arguments regarding intentional misrepresentation, which we address and reject above. CS's arguments in this context are similarly unpersuasive. It therefore has not shown the trial court erred by denying its motion for JNOV on this ground.

II

New Trial

CS contends the trial court erred by denying its motion for a new trial, which relied on the same arguments described above. It does not separately address this motion, which we review under the more deferential abuse of discretion standard of review: "The determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." (*Jiminez v. Sears, Roebuck & Co.* (1971) 4 Cal.3d 379, 387; accord, *Lee v. West Kern Water Dist.* (2016) 5 Cal.App.5th 606, 623.)

Under these circumstances, for the same reasons as described above, we conclude CS has not shown the court abused its discretion by denying its motion for a new trial. "[A]s we have already explained, substantial evidence supported the jury's verdict. Thus, we conclude that both motions were properly denied." (*Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 514.)

DISPOSITION

The judgment and postjudgment order are affirmed. Offshore Supply is entitled to its costs on appeal.

GUERRERO, J.

WE CONCUR:

BENKE, Acting P. J.

DATO, J.